

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)	APPLICATION NO. C-4145/
Commission on its own Motion to Conduct an)	NUSF-74/PI-147
investigation on intrastate switched access)	
charge policies and regulation codified in Neb.)	
Rev. Stat. Section 86-140.)	

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

The Rural Independent Companies (the “Companies”)¹ hereby submit the following comments in response to the Order Opening Docket and Seeking Comments (the “Order”) entered February 24, 2009, by the Nebraska Public Service Commission (the “Commission”) with regard to the investigation of intrastate access charges imposed by Nebraska local exchange carriers for access by interexchange carriers to local exchange networks. The Companies appreciate the opportunity to participate in this docket.

In the Order, the Commission requests that interested parties comment regarding access charge policies and the Commission seeks to clarify the minimum criteria which govern intrastate access rate changes pursuant to *Neb. Rev. Stat.* Section 86-140. Order at 2. To that end, the Commission first seeks comment on a series of five proposals as potential minimum objective evidentiary criteria to be considered by the Commission in intrastate switched access rate dockets under *Neb. Rev. Stat.* Section 86-140, and second, the Commission seeks comment on a series of four questions addressing intrastate switched access policies in Nebraska. Order at 3-4.

¹ The Companies are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Curtis Telephone Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

The Companies submit the following comments regarding the five proposals offered by the Commission as potential minimum objective evidentiary criteria to be considered in intrastate switched access rate dockets under *Neb. Rev. Stat.* Section 86-140.²

- 1) *The NUSF-EARN form compiled on a supported services basis as a tool to measure the cost of providing access in conjunction with supported services.*

The Companies do not perform cost studies on a supported services basis and therefore, do not compile their NUSF-EARN forms that are filed annually with the Commission on a supported services basis. The Companies submit that compilation of NUSF-EARN forms on a supported services basis should not be required in order to justify an intrastate access rate increase. Compilation of a carrier's NUSF-EARN form on such a basis would entail considerable internal staffing costs as well as costs to the carrier for external consulting services to complete a supported services study necessary for such a compilation. Furthermore, the Companies do not have the experience with what such a study entails or whether it is a valid and appropriate instrument.

Although the Companies do not recommend that the Commission require, as a minimum objective evidentiary criteria, that NUSF-EARN forms be submitted on a supported services basis, to the extent the Commission contemplates such a requirement, it should offer guidance with regard to the calculations that would be required in connection with such filings before such a test is possibly adopted. Currently, no Commission rules or guidelines exist to instruct carriers with regard to proper allocation of costs between intrastate access and basic local exchange services, or with regard to separation of costs on a supported services basis.

² The Commission's statements or inquiries on which comments are requested are set forth in these Comments in italicized text and are followed by the Companies' comments in normalized text.

The Companies urge the Commission not to require submission of NUSF-EARN forms on a supported services basis as one of the minimum objective evidentiary criteria in support of a carrier's request for an intrastate access rate increase.

2) *The NUSF-EARN form to consider the federal and state universal service support received by the requesting carrier.*

The Companies submit that since carriers already report federal and state universal service support data to the Commission in NUSF-EARN form filings, continuation of this practice would serve as reasonable minimum objective evidentiary criteria to be considered by the Commission in intrastate access rate dockets under *Neb. Rev. Stat.* Section 86-140.

3) *Alternative revenue generation sources for the carrier, including local rates in both urban and rural areas.*

The Companies interpret the phrase "alternative revenue generation sources" to mean all regulated services revenue and associated expenses. Since the Companies currently include all regulated revenues in their NUSF-EARN form filings with the Commission, the Companies submit that continuation of this practice would serve as reasonable minimum objective evidentiary criteria to be considered by the Commission in intrastate access rate dockets under *Neb. Rev. Stat.* Section 86-140.

4) *Establish a reasonable rate-of-return figure for carriers seeking access rate increases along with establishing an appropriate test year.*

The Companies recommend that the Commission confirm that the existing Commission-approved 12% rate-of-return in the NUSF program is reasonable to consider for carriers seeking intrastate access rate increases. This rate-of-return amount is consistent with the Commission's findings and approved rate in Application No. NUSF-50.³

³ See, *In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26*, Application No. NUSF-50, paras. 19-20 (Dec. 19, 2006).

The Companies believe that a 12% rate-of-return should be established for a given test year for a carrier seeking an intrastate access rate increase. Consistent with traditional rate cases in which the Commission established “fair and reasonable” rates,⁴ the Companies submit that the Commission should establish the most recent period for which a carrier’s audited financial data is available as the appropriate test year to be considered by the Commission in an intrastate access rate proceeding under *Neb. Rev. Stat.* Section 86-140. Further, and again consistent with traditional rate-making practice, the Companies recommend that the Commission also allow the carrier to include adjustments to the test year financial data for any materially known and measurable investments or expenses in the calculations to determine whether or not the carrier’s request for an intrastate access rate increase is fair and reasonable.⁵

5) *Examine the minutes of use (MOU) demand and access line counts of the carrier, consistent with a specific test year.*

The Companies submit that since minutes of use are utilized as a basis to calculate an intrastate access rate, it would be reasonable to examine access demand in the form of MOU as minimum objective evidentiary criteria in calculating any intrastate access rate increase. The Companies also submit that the test year used for financial data pursuant to Item 2 above should be used as a basis for ascertaining MOU demand that would be used to calculate the intrastate access rate per MOU. The Companies recommend that the Commission would allow the carrier to include adjustments to the test year MOU demand data for any known and measurable based-upon historical data relating to decreases in access MOU. Since access lines are not utilized as a

⁴ See, e.g., *In re Application of Northwestern Bell Tel. Co.*, 218 Neb. 563, 357 N.W.2d 443 (1984). The provisions of *Neb. Rev. Stat.* Section 86-140 require the setting of “access charges which are fair and reasonable.”

⁵ *Id.*, 218 Neb. 565-571.

basis for calculating intrastate access rates, requiring the submission by a carrier of access line counts as potential minimum objective evidentiary criteria appears to be misplaced.

In addition to inviting comments on the preceding five (5) matters, the Commission has also invited interested parties to comment in response to the following questions:

1) *Should limits be placed on the frequency of access cases that any carrier can file with the Commission?*

The Companies recommend that the Commission's Rules of Procedure, Title 291, Chapter 1, Rule 009, should apply to the frequency of access charge rate change filings. This Rule currently provides that after an application has been denied, a subsequent application covering substantially the same subject matter shall not be considered within ninety (90) days from the final denial.⁶

2) *How are access rates structured and does the structure vary from carrier to carrier? Should the structure of access rates affect the Commission's analysis of access rate increases?*

Intrastate switched access rates are structured to include the following rate elements: 1) local switching, 2) information surcharge, 3) tandem-switched transport facility, and 4) tandem-switched transport termination. The information surcharge rate element is a relatively minor charge and is not charged by all carriers. Any carrier with a tandem switch also charges a tandem-switching charge.

The Commission's analysis of a carrier's access rate increase should take into account the structure of access rates only as a means to determine whether or not the proposed rate increase would allow the carrier to recover costs under the authorized rate-of-return as addressed in

⁶ This Rule is currently subject to consideration by the Commission in Rule and Regulation Proceeding No. 161 for modification to increase the waiting period to one hundred eighty (180) days. In the event this proposed change is adopted, the Companies recommend that such modification be applied to the frequency of intrastate access charge cases that a carrier may file with the Commission pursuant to Section 86-140.

response to Item 4 above through an analysis of revenues associated with all of a carrier's rate elements.

3) *Are the Commission's initial policy goals set out in 1999 for intrastate switched access reform still valid today? Have they been achieved? What further steps, if any, should be considered?*

The Commission, in its initial docket on intrastate access reform, found that due to the opening of incumbent local exchange carrier ("ILEC") markets to competition, pricing certain ILEC services such as intrastate access at levels to provide implicit support primarily to residential service was no longer desirable. The Commission found that implicit support in services such as state access should be reduced and this lost support, over a reasonable period of time, should be replaced through increases in local rates and by state and federal universal service funds.⁷

Implicit support in state access has been reduced and partially replaced through local rates and state and federal universal service funds. Local exchange markets in Nebraska have been opened to competition and are served by CLECs and CMRS providers. Opening markets to competition where markets support competition was and is a valid policy goal. To the degree that reform of Nebraska intrastate access rates has resulted in increased competition and choice of telecommunication providers, the goal of opening local markets to competition has been achieved. Therefore, no further industry-wide actions on intrastate access rates or structure needs to be considered at this time.

Furthermore, the Companies note that in conjunction with the identification of policy goals for intrastate switched access, the Commission identified the following additional goals for

⁷ See, *In the Matter of the Application of the Nebraska Public Service Commission, on Its Own Motion, Seeking to Conduct an Investigation into Intrastate Access Reform*, Application No. C-1628, Findings and Conclusions (Jan. 13, 1999).

the Nebraska Universal Service Fund *In the Matter of the Commission on Its Own Motion, Seeking to Establish a Long-Term Universal Service Mechanism*, Application No. NUSF-26, Progression Order No. 2, para. 29 (Aug. 27, 2002):⁸

- a). The Commission should establish sufficient specific and predictable state support mechanisms.
- b). All providers should be afforded an opportunity and not a guarantee to recover their costs. Support should be used for its intended purpose and any support that comes directly from the NUSF should be explicit.
- c). The Commission should ensure that all Nebraskans have comparable access to quality telecommunications and information services, including interexchange services, advanced telecommunications and information services.
- d). All services must be offered at rates that are just, reasonable, and affordable and that rural rates should be reasonably comparable to urban rates, all across the services.
- e). The Commission should encourage the development and maintenance of the telecommunications infrastructure and encourage investment and the deployment of new technologies.
- f). Any requirements the Commission adopts should be competitive and technologically neutral.
- g). The Commission should protect the public interest and welfare and the surcharge should not burden telecommunications consumers.
- h). The Commission should advance the affordable availability of telecommunication services to low-income consumers and schools, libraries and rural healthcare providers.
- i). The focus of the NUSF support should be on the consumers and not on the companies.

The Companies submit that due to the interrelated nature of intrastate access charges and the NUSF, the Commission must bear in mind the foregoing goals of the NUSF as it considers the continuing validity of its intrastate access reform policy.

4) *Should the Commission's policy of intrastate switched access rate reform be modified? If so, in what way?*

The Companies believe that the "policy" referenced in this Question 4 is the Commission's policy that implicit support in services such as intrastate access should be reduced

⁸ In the Commission's recent decision *In the Matter of the Nebraska Public Service Commission to Conduct an Investigation of Qwest Corporation's Proposed Switched Access Charge Rates*, Application No. C-3945/NUSF-60.02, p. 9 (Feb. 3, 2009) the Commission referenced the goal stated in paragraph b) and stated "Our policy goals and concerns in this area have not changed."

and this lost support, over a reasonable period of time, should be replaced through increases in local rates and by state and federal universal service funds.⁹ The Companies do not believe that any significant modifications to the Commission's intrastate switched access policy are necessary. However, the Companies suggest that the following points be considered by the Commission.

First, the Companies believe that the Commission's policy regarding intrastate access rate reform should be modified to require regulated revenue and cost information be compiled either on a total company basis or on an intrastate only basis and reported accordingly on a carrier's NUSF-EARN form. Second, the Companies submit that the Commission's policy of removing implicit subsidies from intrastate access should be subject to the further policy consideration of affording Nebraska Eligible Telecommunications Carriers ("NETC") the opportunity to recover costs of service and a reasonable rate of return in order to continue to fulfill carrier-of-last-resort obligations. If an NETC's NUSF-EARN form demonstrates significant underearnings, the carrier should have the opportunity to increase intrastate access rates in order to earn a reasonable rate of return. Finally, the Companies further note that since there continues to be a possibility that nationwide intercarrier compensation reforms may be implemented by the FCC in the future, the Commission should continue to evaluate intrastate access policies in the context of unfolding changes in Federal intercarrier compensation.

⁹ See, footnote 7 above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2009, the original of the foregoing Comments was served upon Mike Hybl, Executive Director of the Commission, by hand delivery, and an electronic copy was also provided to the Commission.

Paul M. Schudel